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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION TO)	
AMEND RULES FOR ADMISSION)	R-06-0017
TO THE BAR OF ARIZONA)	
)	COMMENT ON PETITION
)	

The undersigned Arizona attorney submits these comments in support of the Petition to adopt an admission by motion rule in Arizona (the “Petition”).

I submit these separate comments not to reiterate the arguments already well stated but to explain why the petition does not go far enough.

I. The Petition Would Allow Admission Only On A Reciprocal Basis; That Is, It Would Allow Admission Only Of Those Lawyers Who Are From States That Also Permit Arizona-Admitted Lawyers To Be Admitted There On The Same Basis.

Among the arguments correctly advanced within the petition, is the notion that the State Bar of Arizona and the Arizona Supreme Court are not tasked with “protect[ing] Arizona attorneys from perceived competition.” (Petition, p. 7:19-20)

However, this same argument applies to the proposal itself which should be approved and extended to permit admission on motion for attorneys coming from jurisdictions which do not offer reciprocity. Under the proposal, attorneys otherwise qualified and admitted in the states of California, Nevada, Hawaii, Maryland, Mississippi, Montana, New Jersey and New Mexico would all be required to take the Arizona bar examination, as those jurisdictions do not currently offer reciprocity.

As drafted, the petition expressly proposes to limit admission to attorneys from jurisdictions of origin that *also* have reciprocity requirements. This is a protectionist policy for the same reasons advanced in support of the petition.

The original content of modern admission rules offers evidence of protectionist intent. In the past, the rules typically required applicants to be state residents before becoming members of the bar, *A Constitutional Analysis of State Bar Residency Requirements Under the Interstate Privileges and Immunities Clause of Article IV*, 92 Harv. L. Rev. 1461, 1461 (1979) (observing that prior to 1980, “[m]ost states [had] long required residency of applicants for admission to the bar”). or they made it more challenging for non-residents to gain bar admissions. *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) (referencing a Virginia rule that fits this description) The

United States Supreme Court struck down these provisions in the 1980s because they reflected economic protectionism. *Barnard v. Thorstenn*, 489 U.S. 546 (1989) (striking down a residency requirement); *Friedman*, 487 U.S. at 61 (finding unconstitutional a rule that permitted residents, but not non-residents, to gain admission on motion); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) (holding residency requirement to be unconstitutional).

Reciprocity requirements are equally protectionist. DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 150 (2000) note 62, at 154 (arguing that “reciprocity rules are difficult to justify from any consumer protection perspective”); Residency Requirements, in Nat’l Conference of Bar Exam’rs. *The Bar Examiners’ Handbook* 20:103-04 (1991) (suggesting that reciprocity requirements may be unconstitutional); Comment, *supra* note 5, at 756-57 (concluding that reciprocity provisions are “a blatant example of the protection of local attorneys without regard to individual competence of the out-of-state attorney”); Samuel J. Brakel & Wallace D. Loh, *Regulating the Multistate Practice of Law*, 50 Wash. L. Rev. 699, 704 (1974-75) (contending that reciprocity requirements “are explicable solely in terms of economic protectionism”). But see, e.g., *Goldsmith v. Pringle*, 399 F. Supp. 620, 623-24

(D. Colo. 1975) (upholding a reciprocity provision against a constitutional challenge on the grounds that it encourages other states to recognize the law licenses of the home state's citizens); *Minton v. Character & Fitness Comm. of the Ky. Bd. of Bar Exam'rs*, 979 S.W.2d 921 (Ky. 1998) (similar)

II. Arizona Should Adopt the District of Columbia's Approach.

The District of Columbia has no reciprocity requirements. Instead, the District of Columbia offers bar admission without the need for examination, and without the need for a reciprocity requirement if certain sensible conditions are met. The applicant “[m]ust be admitted for five years in another jurisdiction or admitted in another jurisdiction and graduate of ABA-approved admitted with a scaled score of 133 or more on the MBE and passed MPRE.”

III. The Proposed Rule Protects Arizona Consumers of Legal Services

Obviously, concerns about increased competition are no reason to *oppose* admission by motion. On the contrary, increased competition is *good* for consumers of legal services because increased supply leads to lower prices and greater availability of services. So why does the proposal require reciprocity? The only plausible explanation is protectionism may be acceptable by degrees.

In considering this point, the rapid growth of Arizona is a factor. Sufficient lawyers to meet the demand of a growing populace is in the interests of the Arizona citizenry, and increased competition is good. Phoenix is the 5th largest city in the U.S, and Arizona the fastest growing state in 2006. (See article at Money Magazine of December 2006) The Phoenix metro area -- almost 4 million people -- is made up of about two dozen separate cities. Phoenix itself now boasts the same population as San Diego and an area larger than Los Angeles. Neighboring Mesa has the population of Pittsburgh; Tempe is as big as Kansas City.

Conclusion

For these reasons and those articulated in the Petition, we urge the Court to adopt the proposed rule allowing admission to the Arizona bar by motion, and to further extend the proposal to offer admissions *without* requiring reciprocity, similar to the time-tested process now utilized by the District of Columbia.

DATED this 28th day of February, 2007.

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By

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